IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.26 OF 2007

IN

NOTICE OF MOTION NO.3546 OF 2004

IN

SUIT NO.1409 OF 1976

Raj R. Goenka. ...Petitioner.

vs.

1.Nirmalkumar Purshottam Rungta and another. ...Respondents.

Mr.A.Y.Bookwala with Snehal Shah i/b. Y.R.Shah, for Petitioner.

Mr.D.D.Madan i/b. J.S.Chandnani, for Respondent nos. 1 and 2.

CORAM: D.K.DESHMUKH,J.

DATED: 5th June,2007.

P.C.:-

1. This contempt petition has been filed by the person who claims to be the legal representative of the original plaintiff in the suit

no.1409 of 1976. The suit no.1409 of 1976 was filed by one Radheshyam claiming to be the adopted son of Chiranjilal. Mr.Radheshyam is natural son of Sitabai, the daughter of Chiranjilal. The suit was filed by him for removal of the trustees i.e. Defendnats. Radheshyham claims to be the sole beneficiary under the trust created on 31.10.1955. He had claimed in the suit that the defendants trustees are acting contrary to the interest of the trust. In that suit he had taken out a notice of motion bearing no.2435 of 1985 for appointment of Receiver on the trust property. The trust property is a building which is occupied mostly by the tenants. It appears that there was another suit also wherein notice of motion was taken out. The notices of motion in both the suits were decided by the learned Single Judge of this Court and the learned Single Judge appointed receiver on the property. That order was challenged before the Appeal Court. The appeal was registered as appeal no.1470 of 1987. The appeal was decided by order dated 10th August,1988. The Division Bench allowed the appeal, set aside the order made by the learned Single Judge, appointing the Receiver. The Division bench made the following order:-

> "We direct that pending the disposal of the two suits, without the prior permission of the Court, the trustees will not transfer by sale, mortgage or lease Walkeshwar

property or any part thereof. The trustees will not allow any transfer of the tenancies held by present tenants. They will not recognise occupant, if any, or any portion of the suit property as tenant or as licensee. In the event any attempt by the tenants and/or occupants to transfer, assign and/or sublet their tenancies and/or accommodation is brought to the notice of the trustees, the trustees will forthwith take steps in accordance with law. The trustees will immediately prepare and submit in a sealed cover to this Court within two months from today a list of the tenants of the flats and/or accommodations/garages of the property indicating therein the dates of commencement of the tenancy if known, the approximate accommodation occupied, the rent payable and also the month or the period upto which such rent has been paid and arrears of rent, if any. The trustees will continue to maintain regular accounts of the trust property and submit half yearly statements of accounts in a sealed cover to this Court before 15th August and 15th January each year. The first such account should be kept from 1st August,1988. Until the disposal of the suits the decrees for eviction, if any, obtained by the trustees either against Radheshyam or Sitabai shall not be executed unless otherwise ordered by this Court. The trustees will continue to keep the funds of the trust estate in separate bank account. The will also take steps for preservation of Walkeshwar property and, if necessary, take up repairs within the funds available."

The Division bench, thus, made an order of temporary injunction restraining the trustees from transferring the tenancies and the trustees were also directed not to permit the tenants to transfer the tenancies. It was also directed that if the tenants make an attempt to transfer the tenancy, action should be taken by the trustees against them. The order of the Division Bench in the Appeal was challenged before the Supreme Court in the petition for special leave to appeal no.16597 of 1988. That petition was disposed of by the Supreme Court by order dated 15.3.1989. The order of the Supreme Court reads as under:-

> "We see no grounds to entertain the special leave petitions except, however, to make the following provisions in addition to the directions given by the Division Bench:-
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> (i) The list of tenants of the flats and/or accommodation/garages of the property indicating therein the dates of the commencement of the tenancy if, known, the approximate accommodation occupied, the rent payable and also the month or the period upto which such rent has been paid and arrears of rent, if any which the trustees have been asked to submit in a sealed cover within a period of two months should be made known to the petitioners themselves. Therefore, it is ordered that the petitioners will be entitled to an inspection of the list filed by the trustees.
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> (ii) Likewise the half yearly statement of accounts which the trustees have been directed to file should also

> be made available for inspection by the petitioners as and when the statements of accounts are filed.
>
> (iii) If there is any change of user of any of the premises said to belong to the trust, takes place the respondents, as soon as they come to know of it, should give notice of the same to the petitioners and immediately initiate appropriate proceedings against the tenants.
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> With these observations, the special leave petitions are disposed of."

The Supreme Court did not set aside the order made by the Division Bench but issued additional directions against the trustees. The additional directions in so far as relevant for the present purpose was that the trustees will take action against the tenants who may change the user of the premises. The notice of motion no.3546 of 2004 was taken out by the plaintiff seeking appointment of receiver on the trust property on the allegations that the trustees are permitting change of tenancy and also change of user and they are not taking any serious action against the tenants and their assignees. That notice of motion was decided by me by order dated 23.12.2005. At the hearing of that notice of motion, the trustees contended that though some tenants have changed the user and have also transfer the tenancy, they have instituted proceedings against such tenants and their assignees and that they are diligently prosecuting those proceedings. The plaintiff

disputed the position that the trustees are diligently and seriously prosecuting the proceedings and contended that the parties are hand in glove with the defendants in the suits instituted against the tenants and their assignees. In this background it was stated on behalf of the trustees that if the plaintiff feels that the trustees are not seriously prosecuting the suit, the plaintiff can take over the prosecution of the suits on behalf of the trust. The plaintiff immediately accepted the offer and the Court finding that the principal grievance of the plaintiff was that the trustees are not seriously prosecuting the proceedings instituted against the tenants and their assignees and as the trustees were willing to hand over the prosecution of those suits to the plaintiff himself, there is no need to appoint any receiver, disposed of the notice of motion. The relevant part of the order reads as under:-

> "During the hearing of the motion, an offer was made on behalf of the trustees that if according to the Plaintiff the trustees are not seriously prosecuting the suit, the plaintiff can take over prosecution of the suit on behalf of the trust. The Plaintiff has accepted that offer."

Immediately after this order was made, the plaintiff wrote to the trustees calling upon them to hand over the papers of the suits filed by them against the tenants so that the plaintiff can prosecute those suits on behalf of the trustees. The first letter written in this regard by the

original plaintiff is dated 20.1.2006. There is no dispute that there were subsequent letter also written by the original plaintiff to the trustees but there is no positive response from the trustees. Ultimately, the trustees took a positive stand in relation to the order made by this Court. That stand is contained in the letter dated 26.6.2006. According to the respondents-trustees the plaintiff mis-interpreted the order of the Court. They stated in their letter dated 26.6.2006 that "With reference to letter dated 7.4.2006 my clients deny the interpretation of the order of this Hon'ble Court sought to be put by your client. My clients do not admit that as per the order your client can take over the prosecution of the suit as alleged. My clients deny that they have found out the ways and means for not complying with the order dated 23.12.2005 as alleged by you."

2. According to the respondents-trustees before taking over the prosecution of the suits, the original plaintiff was under a duty to establish that the respondents-trustees are not prosecuting the suits seriously. The respondents trustees thus did not hand over the papers of the suits to the original plaintiff and therefore, the original plaintiff was not able to prosecute the suits. Ultimately, the original plaintiff died on 15.8.2006. The present petitioner who is his legal heir has brought himself on record of the civil suit as a plaintiff. According to the plaintiff, thus, the respondents have willfully committed breach of

the statement made by them before this Court which is recorded in the order dated 23.12.2005 and avoided to hand over the prosecution of the suits to the original plaintiff.

3. In the reply that is filed by the respondents, the principal defence that has been raised by the respondents is that according to them, the offer made by them which is recorded in the order was a conditional offer. According to them, if the trustees were diligently prosecuting the suits, it was not necessary for them to hand over the prosecution of the suits to the original plaintiff. According to them, this was there bonafide interpretation of the order and therefore, it cannot be said that they have willfully disobeyed any order made by this Court or committed breach of any statement made by them.

4. I have heard the learned Counsel appearing for both the sides. I have also perused the record. The original plaintiff was claiming to be the beneficiary of the trust. It was his case that the trustees are hand in glove with the tenants and they are permitting the tenants to transfer the tenancy. When the notice of motion was being heard, it was submitted on behalf of the trustees that they are not hand in glove with the tenants, in fact whenever they found that the tenancies have been transferred by the tenants or user has been changed they have instituted proceedings against the tenants,

therefore, the allegation of the original plaintiff that the trustees are not prosecuting the suit diligently is not correct. They are prosecuting the proceedings diligently. In any case in view of the allegations of the original plaintiff that the trustees are not diligently prosecuting the suits, they are willing to hand over the prosecution of the suits to the plaintiff so that he can prosecute the suits on behalf of the trust. In the affidavit filed in support of the notice of motion it was the contention of the original plaintiff that the trustees are not seriously prosecuting the suits instituted by them. Because at the time of hearing, an offer was made on behalf of the trustees that the original plaintiff can himself prosecute the suit on behalf of the trust, the Court did not consider it necessary to hold an inquiry to find out whether the allegations made in the affidavit by the original plaintiff that the trustees are hand in glove with the tenants and are not seriously prosecuting the proceedings is correct or not and declined to appoint the receiver for prosecuting the suits. The trustees therefore, having prevented the Court from making that inquiry by making the aforesaid offer cannot resile from the offer made. From the subsequent conduct of the trustees it appears that they had made the offer precisely to avoid the inquiry by the court into their conduct in the matter of prosecution of the suit**..** After having persuaded the Court not to appoint the Receiver by making solemn offer before the Court that they are willing to hand over the prosecution of the suits to the plaintiff

so that he can prosecute the suits on behalf of the trust, the respondents have resiled from their offer. According to the trustees it was a conditional offer and because they were prosecuting the suits diligently they were not obliged to hand over the suits to the original plaintiff. I find that the respondents-trustees made the offer to hand over the prosecution of the suits to the original plaintiff only to represent to the Court that they have no personal interest in the matter and to persuade the Court not to appoint the Receiver to prosecute the suit. Even assuming that, according to the trustees, they were seriously prosecuting the suit, they could have still handed over the prosecution of the suits to the plaintiff. Even after handing over the papers to the plaintiff, the trustees were entitled to oversee whether the plaintiff is properly contesting the suits or not. On finding that the plaintiff is not prosecuting the suits properly, it was always open to them to come back to the Court and seek an order for taking over the prosecution of the suits from the plaintiff. In my opinion, this course of action would have been adopted by the respondents had they not been made the offer in the Court only to avoid the inquiry by the Court into their conduct in the matter of prosecution of the suits. The Supreme Court has in its judgment in the case of "Rita Markandey V. Surjit Singh Arora, AIR 1997 Supreme Court 2174" has considered this aspect of the matter and the Supreme Court has held that when a party makes a statement before the Court in order to induce the Court to make a

particular order or refrain from making a particular order and if the parties resiles from that statement, the party is guilty of contempt of the Court. The relevant observations are to be found in paragraph 12 of that judgment, they read as under:-

> "However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated October 5, 1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of Court, notwithstanding non-furnishing of the undertaking, if it is found that the representation was false and the respondent never intended to act upon it."

In the present case, the respondents made an offer that the original plaintiff can take over the prosecution of the suits in order to induce the Court not to make an inquiry into the allegations made by the original plaintiff that the respondents are in hand in glove with the tenants and therefore, they are not prosecuting the suits seriously and after having persuaded the Court, by making that offer, not to make an

inquiry, they resiled from it. I find that when the offer was made by the respondents they had no intention to abide by that offer and it was made by them only to induce the Court not to make inquiry into their conduct, and therefore, in my opinion, the respondents are clearly guilty of having committed civil contempt of the Court.

5. The respondents have tendered apology. In paragraph (2) of the affidavit in reply they have stated that they are tendering unconditional apology. In my opinion, the apology tendered is not genuine. Had the apology been genuine, at least when the contempt petition was filed, they would have made an application to the Court seeking clarification of the order, but they have not sought clarification of the order because they never intended to abide by the offer made by them. The apology is therefore, not genuine and cannot be accepted. In my opinion, the respondents are guilty of having committed civil contempt of this Court for which they are liable to be punished. In my opinion considering that the respondents are on a position as trustees and solemnly they had made statement which they had no intention to abide by, it will be appropriate to sentence them to undergo simple imprisonment. As observed above, the intention behind making the offer by the respondents was to persuade the Court not to hold inquiry in their conduct. Therefore, the conduct of the respondents tends to interfere with the course of justice and therefore, in my opinion, it would be appropriate to sentence them

into simple imprisonment. In my opinion, sentencing the respondent nos. 1 and 2 to undergo simple imprisonment for a period of one month is appropriate. It is accordingly, so ordered. They are also directed to pay fine of Rs.2000/- each. The respondents are directed to pay as and by way of cost Rs.15,000/- to the petitioner.

At the request of the respondents only that part of the order sentencing the respondents to undergo simple imprisonment for a period of one month is stayed for a period of six weeks from today subject to condition that the amount of fine and cost be paid within a period of two weeks from today.